Supreme Court, U.S.
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No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

BILLY HOWARD STANFIELD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment to the United States Constitution permits law enforcement officers, whenever they are engaged in a traffic stop of a vehicle with legally tinted windows, to open one of the vehicle's doors to conduct a protective search of the interior of the vehicle.

2. Whether an *ex post facto* reconstruction of an objective reasonableness argument can validate a protective search of the interior of a vehicle during a traffic stop where the law enforcement officers, in fact, were able to view the interior of the vehicle from the outside and lacked actual suspicion that weapons or persons were hidden to justify a search of the vehicle.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are the Petitioner, Billy Howard Stanfield, a citizen of the State of Maryland, and the Respondent, the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Billy Howard Stanfield respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit in the above-entitled case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 109 F.3d 976 (4th Cir. 1997) and is reproduced in the Appendix at 1a. The opinion of the United States District Court of Maryland is reported at 906 F.Supp. 300 (D. Md. 1995) and is reproduced in the Appendix at 26a.

JURISDICTION

The Court of Appeals issued its opinion on March 31, 1997. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND FEDERAL RULE INVOLVED

The Fourth Amendment to the United States Constitution provides in the pertinent part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; shall not be violated, . . .

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the District Court.

On May 4, 1995, Mr. Stanfield was charged in a two count indictment in the United States District Court for the District of Maryland, Northern Division, alleging possession with intent to distribute cocaine base, 21 U.S.C. § 841(a)(1) and possession with intent to distribute cocaine, 21 U.S.C. § 841(a)(1).

On June 22, 1995, Mr. Stanfield moved to suppress evidence seized from his vehicle, a Nissan Pathfinder.

After holding evidentiary hearings on September 13, 1995, and October 16, 1995, to resolve Mr. Stanfield's motion to suppress evidence seized from the Pathfinder on April 29, 1994, the District Court issued an order on October 24, 1995, reprinted at Appendix 34a, denying Mr. Stanfield's motion.

On October 27, 1995, Mr. Stanfield agreed to plead guilty to count one of the indictment, but reserved, in his plea agreement, "the right to appeal those Fourth Amendment issues generated by the pretrial motion in the instant case."

The District Court found that because "the officers could not see into the Pathfinder . . ., they did not know whether Stanfield was alone or whether any weapon was within arms reach of the defendant. Officer Mackel, unbidden, opened the passenger side door." 906 F.Supp. at 303. Appendix at 32a-33a. As a result of this search, cocaine was discovered and Mr. Stanfield was arrested.

Mr. Stanfield was sentenced to 70 months of incarceration on January 11, 1996. He noted an appeal to the United States Court of Appeals for the Fourth Circuit on January 11, 1996.

B. Statement of Facts and Proceedings Relevant to the Issues Presented for Review.

At approximately 9:00 A.M. on April 29, 1994, a cloudy, cool day, Mr. Stanfield was sitting in the driver's seat of his Nissan Pathfinder at the 900 block of Parrish Street in Baltimore City, Maryland, facing southbound. 906 F.Supp. at 301. Appendix at 27a. Stanfield had his driver's side window down and was leaning out of the window to talk to an individual named William Stanton, who was leaning out of a second story window of his residence located at 919 Parrish Street.[1] 906 F.Supp. at 301. Appendix at 28a. Although Parrish Street is a two-way street, it is very narrow and does not permit two vehicles to pass one another. No other vehicles or individuals were present on Parrish Street. Appendix at 27a.

Officers Kevin Buie and Michael Hamel were in an unmarked police vehicle driven by Officer Avon Mackel when they observed Mr. Stanfield's vehicle stopped on Par-

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[1] Although the District Court described Mr. Stanton as a known drug dealer, the government believed that this finding was without basis in the record. Accordingly, the government agreed to a summary reversal of Petitioner's conviction, but the Court of Appeals denied this motion twice and searched the record itself to support this proposition. 109 F.3d at 986 n.5. Appendix at 15a-17a.

rish Street. 906 F.Supp. at 301. Appendix at 27a. The officers had no information about the Pathfinder or Mr. Stanfield and no specific objective during their patrol of the area. 906 F.Supp. at 301. Appendix at 27a. Because they noticed a four wheel drive vehicle with tinted windows stopped on a small street, they decided to investigate. Appendix at 27a. The officers drove around the block turning onto Parrish Street northbound towards the Pathfinder effectively blocking the Pathfinder on Parrish Street. Appendix at 27a-28a.

After blocking Stanfield on Parrish Street, the officers alighted from their vehicle wearing bullet proof vests with badges displayed. 906 F.Supp. at 301. Appendix at 27a-28a. Officers Buie and Hamel approached Stanfield on the driver's side of his vehicle. Appendix at 28a. Officer Mackel approached the Pathfinder on the passenger's side. 906 F.Supp. at 301. Appendix at 28a.

Officer Buie did not observe any effort by Mr. Stanfield to escape or take any furtive action. Appendix at 43a. Officers Buie and Hamel requested from Mr. Stanfield his driver's license and registration. Appendix at 43a.

As Officers Buie and Hamel requested Mr. Stanfield's driver's license and registration at the open driver's side window, Officer Mackel approached the Pathfinder on the passenger's side. 906 F.Supp. at 301. Appendix at 28a. Finding the passenger's side window closed, Officer Mackel opened the door of the Patfinder and observed a paper bag on the back seat that had a light tan powdery substance at its mouth. 906 F.Supp. at 303. Appendix at 30a-31a. Seizing the bag, Officer Mackel yelled "1030" indicating that he had found contraband. Mr. Stanfield, who was wearing a cast on his leg, was removed from the vehicle and placed under arrest. 906 F.Supp. at 302. Appendix at 28a.

Both Officers Buie and Mackel testified that standing outside the Patfinder they could see inside the vehicle "clear

as day" despite the presence of tinting on the windows. Appendix at 45a.

Neither Officer Buie nor Mackel testified that they had a reasonable belief that Mr. Stanfield was armed or dangerous. Appendix at 37a-38a; 43a. In fact, Officer Mackel testified that they had no information concerning either Mr. Stanfield or his Pathfiender. Appendix at 37a. Officers Buie and Hamel, who were actually speaking to Mr. Stanfield, took no action to search either Mr. Stanfield or the area within his immediate reach or control for weapons before Officer Mackel conducted his open door search of the interior of the vehicle. Appendix at 43a-44a.

Neither Officer Buie nor Mackel testified that they were concerned about passengers in the vehicle. Appendix at 39a; 45a. In fact, Officer Mackel testified that he could see into the back seat of the vehicle and determine that there were no passengers before he opened the passenger side door to view the interior of the Pathfinder. Appendix at 39a.

REASONS FOR GRANTING THE WRIT

OFFICER MACKEL'S OPENING OF PETITIONER'S VEHICLE'S PASSENGER SIDE DOOR TO SEARCH THE INTERIOR OF THE VEHICLE DURING A TRAFFIC STOP IS AN UNREASONABLE SEARCH UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A. The Fourth Circuit Court of Appeals' Bright Line Test That Law Enforcement Officers, During a Traffic Stop, May Always Open the Doors of a Vehicle That Has Legally Tinted Windows Is an Unreasonable Search Under the Fourth Amendment to the United States Constitution.

The "touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct. 1801, 1803, 114 L.Ed.2d 297 (1991). "In applying this test we have consistently eschewed bright-line

rules, instead emphasizing the fact specific nature of the reasonableness inquiry." *Ohio v. Robinette*, —— U.S. ——, 117 S.Ct. 417, 421, 136 L.E.2d 347 (1996). In *Florida v. Royer*, 460 U.S. 491, 506, 103 S.Ct. 1319, 1329 75 L.Ed.2d 229 (1983), this Court expressly disavowed any "litmus paper test" or single "sentence or . . . paragraph . . . rule," in recognition of the "endless variations in the facts or circumstances" implicating the Fourth Amendment. This Court has rejected bright line rules in the Fourth Amendment context on numerous occasions. *See, Michigan v. Chesternut*, 486 U.S. 567, 572-73, 108 S.Ct. 1975, 1978-1979, 100 L.Ed.2d 565 (1988). (Rejecting bright line rules as contrary to the Court's "traditional contextual approach."); *Florida v. Bostick*, 501 U.S. 429, 439, 111 S.Ct. 2382, 2389, 115 L.Ed.2d 339 (1991). (Reversing a *per se* rule because it did not consider "all of the circumstances surrounding the encounter."); *Ohio v. Robinette*, —— U.S. ——, 117 S.Ct. at 421. (Rejecting a *per se* rule because "voluntariness is a question of fact to be determined from all the circumstances.")

Despite this Court's admonitions against bright-line tests, the Court of Appeals in this case fashioned a rule that whenever officers approach a vehicle with tinted windows during a traffic stop, the officers may open the vehicle's doors to inspect the interior. Appendix at 8a. Although the Court of Appeals qualifies this *per se* rule such that the windows must be "so heavily tinted that they are unable to view the interior of the stopped vehicle," this qualification lacks any practical substance. Appendix at 8a.

The officers *sub judice* did not allege and did not issue a citation to Mr. Stanfield for a violation of MD Code Annotated, Transportation Article, § 22-406(i) (1996 Cumm. Supp.) which prohibits window tinting on a vehicle that does "not allow a light transmittance through the window of at least 35%." The Court of Appeals de-

scribes the windows of Mr. Stanfield's vehicle as "darkly tinted windows" or "heavily tinted windows." In any case, the Court of Appeals' ruling is based on windows that were legally tinted, permitting light transmittance of 35%.

First, in this case Officers Buie and Mackel testified that they could see inside the vehicle "clear as day" and were able to see inside the vehicle to inspect the back seat of the car without opening the doors. Appendix at 39a; 45a. This discrepancy in the Court of Appeals' analysis will be considered *infra*. Second, whether the officers can view the vehicle's interior through the tinted window is a function of lighting, officers' eyesight or officers' subterfuge. This analysis will be subject to subjective inquiry instead of this Court's preferred objective analysis. Third, the Court of Appeals' *per se* rule would permit law enforcement to open a variety of vehicles' doors for inspection, including vans and trucks whose windows, or lack thereof, would prevent thorough visual inspection of the interior from the exterior of the vehicle. Thus, the Court of Appeals' *per se* rule permitting the opening of vehicle doors for inspection of the interior violates this Court's "traditional contextual approach" and avoids consideration of "all the circumstances surrounding the encounter." 486 U.S. at 572-573, 108 S.Ct. at 1978-1979; 501 U.S. at 439, 111 S.Ct. at 2389.

In evaluating the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security, "this reasonableness" depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law enforcement officers." *Pennsylvania v. Mimms*, 434 U.S. 106, 108-109, 98 S.Ct. 330, 331-332, 54 L.Ed.2d 331 (1977); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975).

On the public interest side, the Court of Appeals relied on the "both legitimate and weighty" justification of officer

safety. 434 U.S. at 110; 98 S.Ct. at 332-373. In dramatizing this concern for officer safety, the Court of Appeals found that:

> Indeed, we can conceive of about nothing more dangerous to a law enforcement officer in the context of a traffic stop than approaching an automobile whose passenger compartment is entirely hidden from the officer's view by darkly tinted windows.

Appendix at 9a.

Further, the Court of Appeals went outside of the record to newspapers, including The Washington Post, The Tucson Citizen and The Los Angeles Times to substantiate its officer safety concerns. Appendix at 9; 10a.

Under the Court of Appeals' rationale, officer safety could be used to justify a wide variety of presently illegal searches. This legitimate justification is being used to emasculate Fourth Amendment protection.

In *Maryland v. Wilson*, —— U.S. ——, 117 S.Ct. 884, 137 L.Ed.2d 41 (1997), Justice Stevens in dissent noted that:

> In Maryland alone, there are something on the order of one million traffic stops each year. Assuming that there are passengers in about half of the cars stopped, the majority's rule is of some possible advantage to police in about one out of every twenty thousand traffic stops in which there is a passenger in the car. And, any benefit is extremely marginal.

See, Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted, 71 (1994).

In *Mimms, supra.*, this Court relied on the public interest in officer's safety to find that an officer's order of a driver out of his vehicle was reasonable under the Fourth Amendment. 434 U.S. at 106, 98 S.Ct. at 331. This procedure was justified to avoid face-to-face confrontations

as well as oncoming traffic. 434 U.S. at 111, 98 S.Ct. at 333. On the public interest side of the test, the Court in *Mimms* found that asking a driver to step outside of his motor vehicle was a "*de minimis*" intrusion, because "the driver is being asked to expose to view very little more of his person than is already exposed." 434 U.S. at 111-112, 98 S.Ct. at 333; *See, also, Wilson*, 117 S.Ct. at 886. ("We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.")

In this case, based on the public interest in officer safety, the Court of Appeals will permit, as a practical matter, in all cases where there are tinted windows, an officer to open the doors of the vehicle to inspect the interior for persons and weapons. The Court of Appeals did not cite any statistical authority to support its concern that a significant number of law enforcement officers' safety had been compromised as a result of criminal activity occurring behind tinted vehicle windows. The Court's use of anecdotal newspaper articles to support this invasion of personal security does not adequately substantiate this public interest.

Under the Court of Appeals analysis, an inspection of the interior of the vehicle would be justified, because an individual other than the driver might be aiming a weapon at an officer. Thus, a passenger would be committing an assault against an officer.

> If Maryland's share of the national total is about average, the State probably experiences about 100 officer assaults each year during traffic stops and pursuits. Making the unlikely assumption that passengers are responsible for one-fourth of the total assaults, it appears that the Court's new rule would provide a potential benefit to Maryland officers in only roughly 25 stops a year. These stops represents a miniscule portion of the total.

Maryland v. Wilson, —— U.S. ——, 117 S.Ct. at 888 (Justice Stevens dissenting).

Of course, this figure of twenty-five officer assaults per year in Maryland includes assaults arising from the pursuit of a motor vehicle, an event which would by itself give rise to probable cause for an arrest and search of the vehicle.

The public interest of officer safety, although important, must have some statistical or objective basis to justify its use. Otherwise, the claim of officer safety can be used to support all manners of searches. The logical extension of the Court of Appeals' *per se* rule would be whenever any part of a vehicle that could hold passengers is obscured from an officer's view, he could open the doors to inspect the interior to insure his safety. For example, minivans and sport utility vehicles could be subject to these searches simply because they ride higher above the ground than automobiles. Vans and trucks would be subject to open door searches because they may not have as many windows as automobiles.

This Court has provided law enforcement officers with a procedure to insure their safety during traffic stops that is less intrusive than the Court of Appeals' open door search. This Court, in *Mimms* and *Wilson, supra.*, has permitted officers to order the driver and passengers out of stopped vehicles. The Court of Appeals rejected this Court's permitted safety procedure as not representing "an acceptable or even reasonable alternative." Appendix at 12a-13a. The Court of Appeals' concern was based on the belief that the officers will be fired upon as they approach the stopped vehicle. Appendix at 13a. How often this has occurred without other probable cause to justify a search of the interior of the vehicle has not been addressed.

Considering the public interest side of the balance, in *Mimms* and *Wilson, supra,* this Court considered that the individual driver and passengers were already stopped and that standing outside the vehicle, the person would expose no more of themselves than would be shown with the win-

dow down. 434 U.S. at 111, 98 S.Ct. at 333; 117 S.Ct. at 886.

By contrast, the Court of Appeals' *per se* rule in this case permits an extensive search of the interior of the motor vehicle based on the officer's subjective finding that he cannot view as much of the interior of the vehicle as he would like. A driver, whose window is down, is already exposing the relevant portions of the interior of his vehicle to law enforcement. However, the Court of Appeals' rule would permit a greater search, including the back seat as well as other types of rear compartments. With the driver's window down, the driver is exposing his hands and the area within his reach or control. If the driver has already exposed the areas from where a threatening weapon might be, a more extensive search is not actually designed for the officer's safety.

Legally tinted windows *vel non* do not establish articulate suspicion to search the interior of a vehicle. In fact, they are installed by automobile manufacturers on millions of vehicles. Legally tinted windows do not obscure the presence of passengers from the exterior of the vehicle, since they permit the transmittance of 35% of the light.

To allow the opening of a vehicle's doors to search the interior as a *per se* rule, is a significant intrusion on the personal liberty of drivers and passengers in the security of the contents in their vehicles. As a practical matter, the Court of Appeals *per se* rule permits warrantless searches of the interior of a vehicle for contraband, because the scope of the search exceeds the stated safety purpose. Once the individuals are removed from the vehicle, the officer's safety would seemingly be ensured, because the driver and passengers would be denied access to weapons. *See,* 117 S.Ct. at 886. A further search of the interior of the vehicle could not serve this safety purpose.

Under the Court of Appeals' rule, once a citizen enters a motor vehicle their Fourth Amendment rights are lost taking a back seat to a law enforcement officer's own view of his safety needs. Clearly, the open door vehicle search permitted under the Court of Appeals' *per se* rule exceeds the "mere inconvenience" or "*de minimis* intrusion" described in *Mimms*, 434 U.S. at 111, 98 S.Ct. at 330. *See, Wilson*, 117 S.Ct. 886 (". . . the additional intrusion on the passenger is minimal.") Thus, the Court of Appeals is interpreting the Fourth Amendment to allow a broader scope of warrantless searches by law enforcement than this Court has permitted in its precedent.

B. *Ex Post Facto* Reconstruction of Objective Reasonableness Argument Cannot Validate a Protective Search of the Interior of a Car Where Officers, in Fact, Lack Actual Suspicion That Weapons Are Present to Justify a *Terry* Search.

As an alternative basis to uphold the officer's actions in this case, the Court of Appeals analogized the open door search of Mr. Stanfield's vehicle to a frisk for weapons under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1202 (1983).

In evaluating the reasonableness of a frisk for weapons under *Terry*, this Court observed:

> The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Terry, 392 U.S. at 27, 88 S.Ct. at 1883.

Additionally, in *Sibron v. New York*, 392 U.S. 40, 64, 88 S.Ct. 1389, 1903, 20 L.Ed.2d 917 (1968), reasonableness required for a *Terry* stop was further explained:

> The police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.

The scope of a valid *Terry* search was extended in *Michigan v. Long, supra,* to include the interior of a car. If contraband, other than a weapon, was uncovered during the course of a *Terry* search, such contraband would be legally discovered. *Long,* 463 U.S. at 1050, 103 S.Ct. at 3481.

However, this Court has stated that generalized searches for contraband under the guise of a *Terry* search are not permitted.

> The *Terry* case created an exception to the requirement of a probable cause, an exception whose "narrow scope" this Court "has been careful to maintain." Under that doctrine a law enforcement officer, for his own protection and safety, may conduct a pat down to find weapons that he reasonably believes or suspects are then in the possession of the person he has accosted. *Nothing in Terry can be understood to allow* a generalized "cursory search for weapons" or, indeed, *any search whatever for anything but weapons.* The "narrow scope" of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked.

Ybarra v. Illinois, 444 U.S. 85, 94-94, 100 S.Ct. 338, 343-44, 62 L.Ed.2d 238 (1979).

Of particular relevancy in the case *sub judice* is the underlying justification for the limit on *Terry* searches.

> The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law.

Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972).

In determining the validity of an officer's *Terry* frisk for weapons, this Court's precedent does not permit these searches where the officers were not actually concerned for their safety regardless of the result of an objective examination of the facts. *See, e.g., Long,* 463 U.S. at 1049, 103 S.Ct. at 3480 (a search for weapons is allowed, if "the police officer possesses a reasonable belief."); 463 U.S. at 1051, 103 S.Ct. at 3483 (police may search, if "they possess a reasonable belief."); 463 U.S. at 1052 n.16, 103 S.Ct. at 3482 n.16 (in order to search "the officer must have an articulate suspicion."); *Ybarra,* 444 U.S. at 93, 100 S.Ct. at 343 ("a frisk is permitted by the officer when he reasonably believes or suspects the detainee to be armed."); *see also, United States v. Lott,* 870 F.2d 778, 784 (1st Cir. 1989) ("an officer cannot have a reasonable suspicion that a person is armed and dangerous when he in fact has no such suspicion.")

This Court finds that an officer's actual suspicion that weapons are present is probative of the validity of a *Terry* stop. *See, Long,* 463 U.S. at 1036, 103 S.Ct. at 3473 (upon observing knife in car, officer frisked suspect and searched car for additional weapons); *Pennsylvania v. Mimms,* 43 U.S. at 107, 98 S.Ct. at 331 (officer performed *Terry* frisk fearing that bulge might be a weapon.); *Adams v. Williams,* 407 U.S. at 145, 92 S.Ct. at 1923 (officer was informed that suspect had a gun in his waist.);

Terry, 392 U.S. at 6, 88 S.Ct. at 1872 (officer feared the suspects might have a gun.); *Sibron,* 392 U.S. at 46, 88 S.Ct. at 1894 (officer never suggested he searched out of a fear that suspect was armed and dangerous.); 392 U.S. at 64, 88 S.Ct. at 1903 (finding a *Terry* frisk invalid in part because officer did not fear suspect was armed and dangerous.)

In the case *sub judice,* the officers stopped Petitioner's vehicle on Parrish Street for a violation of MD Code Annotated, Transportation Article, § 21-1003(r) and § 27-101(a) and (b). "Vehicle stops for traffic violations occur countless times each day; and on these occasions, licenses, registrations, and papers are subject to inspection. . . ." *Delaware v. Prouse,* 440 U.S. 648, 659, 99 S.Ct. 1391, 1399, 59 L.Ed.2d 660 (1979).

Once the officers stopped ten to fifteen feet in front of Petitioner's vehicle, they alighted from their vehicle with their badges displayed. Appendix at 29a. Officer Buie approached on the driver's side and kept Petitioner's hands in his sight. Appendix at 43a. Since he did not observe the Petitioner making any furtive moves with his hands, he did not make any effort to unholster his gun. Appendix at 43a. In fact, Officer Buie took no special action with regard to his own safety or his fellow officer's safety, because he did not observe any action on the part of Petitioner that would cause him to fear for his safety. Appendix at 43a. Officer Buie approached Petitioner and spoke with him through the open driver's window requesting Petitioner's license and registration. Appendix at 43a. Importantly, Officer Buie had no articulate suspicion about hidden passengers or weapons, because he could "see in the vehicle as clear as day." Appendix at 45a.

On the other side of the vehicle, Officer Mackel made his approach toward the Petitioner's vehicle. Appendix at 36a. He recognized the individual on the second floor of a nearby residence with whom the Petitioner was speak-

ing as William Stanton.[2] Appendix at 36a. The facts known to Officer Mackel at this time were: (1) no call had been received concerning Petitioner; (2) no information whatsoever had been received as of Sunday, April 29, 1994, at 9:00 A.M. that Petitioner was armed; (3) no information from any source that the vehicle contained a weapon; (4) no information from observation of Petitioner that he offered any kind of violence toward the officers, (5) none of the officers requested any back up assistance; (6) none of the other officers took out their weapons; (7) no apprehension of danger simply because they were in the western police district of Baltimore City that is a predominantly African-American area; and (8) officers did not believe it necessary to run a check of Petitioner's license plate number through NCIC or MVA systems. Appendix at 37a-40a.

Without any subjective apprehension of fear for his safety and no objective basis for any fear for his safety, Officer Mackel stood next to the passenger side of Petitioner's vehicle and was able to see clearly whatever was in the back seat of the car. Appendix at 39a.[3] Officer

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[2] Even though Officer Mackel had testified only that Mr. Stanton was someone "I had dealing with . . . before," the district court devined that Mr. Stanton was a known drug dealer. Appendix at 28a; 33a. Further, the officers did not observe any exchanges between the Petitioner and Mr. Stanton. Appendix at 36a. Based on this record, the government agreed that there was no basis in the record for the district court's factual finding regarding Mr. Stanton. Appendix at 16a. Accordingly, the parties filed two joint motions for summary reversal of Petitioner's conviction. The Court of Appeals denied these motions and found that the United States had improperly confessed constitutional error. Appendix at 16a-17a.

[3] The Court of Appeals seized on the officer's ability to view the back seat of Petitioner's vehicle as alternative grounds to sustain the search under the inevitable discovery exception to the exclusionary rule. *Nix v. Williams*, 467 U.S. 431, 443, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). First, this basis for upholding the search was not raised below. Appellate courts regularly decline to consider

Mackel was also able to determine that there were no passengers in the vehicle.

These facts do not show the Petitioner committing any crime other than a minor traffic violation. Thus, any search must be tailored to that investigation or be based on some reasonable suspicion that the Petitioner had weapons or that there were passengers in the vehicle. Officers Buie and Mackel failed to articulate any facts or actions by Petitioner that would suggest he had weapons. The Court of Appeals' justification for an objective finding of dangerousness is Petitioner's discussion with Mr. Stanton and his presence in a vehicle with tinted windows. Since tinted windows are not illegal, the officers could see inside the vehicle, and Officer Mackel had only had undescribed "dealings" with Mr. Stanton previously, there was no objective basis for a *Terry* frisk of Petitioner's vehicle. Appendix at 41a.

More importantly, the officers in the case *sub judice* were not in fear for their safety. This is shown by the fact that they did not unholster their weapons, did not call for back up, and did not ask Petitioner to exit his vehicle until after Officer Mackel's open door search of the interior of the vehicle. Of course, Officers Buie and Mackel testified that they did not have a specific fear for their safety when they approached Petitioner. Appendix at 38a; 43a. If they had feared that Petitioner was armed and dangerous justifying a *Terry* frisk, they would have removed Petitioner from his vehicle and conducted a *Terry* frisk for weapons before searching his vehicle. *c.f., Long*, 463 U.S. at 1036, 103 S.Ct. at 3473 (upon seeing a knife in a car police frisked suspect, who was outside of the car, first, and then searched the car.) The Court of Appeals' con-

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points which were not seasonable advanced below. *Clauson v. Smith*, 823 F.2d 660, 666 (1st Cir. 1987). Second, with three officers viewing the interior of Petitioner's vehicle and failing to view any contraband before Officer Mackel opened the car door, the "inevitable discovery" doctrine is not substantiated by the record.

clusion that the officers reasonable suspicion that Petitioner was armed is not supportable, because they did not frisk Petitioner before searching his vehicle.

Moreover, the open door search of the back seat of the vehicle was directed at finding contraband, because the officers knew that there were no passengers in Petitioner's vehicle. Since Officer Mackel's search of the back seat of Petitioner's vehicle was not a search for weapons only, it was improper under *Terry* and *Long*. The police may only conduct a *Terry/Long* search when they are looking for weapons. *Ybarra*, 444 U.S. at 93-94, 100 S.Ct. at 343-44 ("nothing in *Terry* can be understood to allow . . . any search whatever for anything but weapons.")

The district court had no factual basis to find that the officers could not see the back seat of Petitioner's vehicle from the outside when they are the only ones with personal knowledge of their view point. In opening Petitioner's vehicle's door to continue his search of the back seat, the reasonable inference may be drawn that Officer Mackel wanted to view more of it, but that search should be illegal as it is beyond the scope of a search for armed passengers.

Lastly, the crime of which Petitioner was suspected, blocking traffic that was not present, is not the type of crime where the officers would have reason to suspect the presence of weapons. *See, Terry*, 392 U.S. at 28, 88 S.Ct. at 1883 (robbery).

In conclusion, Petitioner respectfully requests that this Court should take jurisdiction of this case to address the issue of whether a district court can reconstruct an objective reasonableness argument to uphold a protective search of the interior of a vehicle where the officers lacked actual suspicion that firearms were present or did not possess specific concerns for their safety.

CONCLUSION

The Petitioner's Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96-4061

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BILLY HOWARD STANFIELD,
Defendant-Appellant.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Benson E. Legg, District Judge;
Herbert N. Maletz, Senior Judge,
sitting by designation.
(CR-95-191)

Argued: December 2, 1996
Decided: March 31, 1997

Before HAMILTON, LUTTIG, and WILLIAMS, Circuit Judges.

OPINION

LUTTIG, Circuit Judge:

Law enforcement officials literally risk their lives each time they approach occupied vehicles during the course of investigative traffic stops. As the Supreme Court has re-

peatedly observed, "a significant percentage of murders of police officers occurs when officers are making traffic stops." *United States* v. *Robinson*, 414 U.S. 218, 234 n.5 (1973). In recognition of the extraordinary dangers to which officers are exposed during such encounters, the Court has consistently accorded officers wide latitude to protect their safety, authorizing them, *inter alia*, to routinely order both drivers and passengers to exit their vehicles during such stops and to conduct the equivalent of "frisks" of automobile interiors whenever they reasonably believe their safety might be in jeopardy.

The advent of tinted automobile windows, however, has threatened to bring to naught these essential law enforcement protections. Confronted with the grave risk that tinted windows pose to the safety of law enforcement personnel, we address herein whether the government's substantial interest in officer safety during a lawful traffic stop outweighs the intrusion on the privacy interests of the vehicle's occupants which results when, because of heavily tinted windows that prevent the interior compartment from being viewed, an officer opens a door of the vehicle in order to ensure that the vehicle's driver is unarmed and that there are no other occupants who might threaten his safety during the investigatory stop. We conclude that, perhaps generally, but at least under the circumstances of this case, the substantial government interest in officer safety which exists when law enforcement officers must approach vehicles with heavily tinted windows far outweighs any minimal privacy interest the suspect retains in the otherwise visible interior compartment of his vehicle.

I.

At approximately 9:00 a.m. on the morning of April 29, 1996, three officers from the Baltimore City Police Department—Officers Mackel, Buie and Hamel—were patrolling a high crime area in West Baltimore known for its open narcotics trafficking when they saw a late model,

black Nissan Pathfinder with heavily tinted windows illegally parked in the middle of the street, effectively blocking traffic. *See* Md. Transportation Code Ann. §§ 21-1003(r), 27-101(a) & (b) (Michie 1996). The officers who were armed and wearing bullet-proof vests over their uniforms because of the dangerousness of their assignment, *see United States* v. *Stanfield*, 906 F. Supp. 300, 301 (D. Md. 1995), circled the block and, when the driver of the Pathfinder made no effort to move his vehicle to allow a free flow of traffic, parked their unmarked vehicle in front of the Pathfinder. Upon exiting their cruiser, the officers noticed that the Pathfinder's driver, appellant Billy Howard Stanfield, was talking to a man leaning from a second story window, whom the officers recognized as William Staten, a known drug dealer. *See id.*; J.A. at 151-52 (testimony of Officer Mackel); *see also* J.A. at 19 (Government's Memorandum of Law in Response to Defendant's Motion to Suppress Evidence).

The officers approached Stanfield's Pathfinder from both the driver and passenger sides, and, as they did so, they noticed that the front driver's side window was down, but that the front passenger side window was raised. *See Stanfield*, 906 F. Supp. at 301, 303. The tinting on the Pathfinder's windows was so dark that Officer Mackel, who was approaching on the passenger's side, could not see into the vehicle. *See id.* at 302, 303. Nor could Officers Buie and Hamel see much of the vehicle's interior during their approach from the driver's side. As a consequence of the officers' inability to see inside the vehicle as they approached, Officer Mackel opened the front passenger side door of Stanfield's vehicle in order to determine whether Stanfield was armed or had access to weapons and whether he was alone in the Pathfinder. When Officer Mackel opened the passenger door, he saw in plain view, from his vantage point entirely outside the vehicle, *see id.*, a clear plastic bag of cocaine protruding from the mouth of a brown paper bag which was overturned on the back

seat of the Pathfinder. *See id.* & n.6.[1] The officers arrested Stanfield, searched the Pathfinder, and discovered a nine-millimeter semi-automatic handgun, numerous empty vials, two contact pagers, and over 200 grams of cocaine. *See id.* at 302. Stanfield was subsequently charged with possession with intent to distribute cocaine and possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1).

Prior to trial, Stanfield moved to suppress the cocaine seized from the back seat of his Pathfinder, contending that the search affected by Officer Mackel's opening of the front passenger door was unconstitutional under the Fourth Amendment and, therefore, that the cocaine discovered as a consequence of that search must be suppressed. Following an evidentiary hearing, the district court denied the motion, upholding the search on two independent grounds. First, citing *Texas* v. *Brown*, 460 U.S. 730, 740 (1983), the district court held that Officer Mackel's opening of the passenger side door was permis-

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[1] The recited facts are those as found by the district court A number of the material facts were vigorously disputed at the suppression hearing and, ultimately, the district court did not fully credit the testimony of either the officers or Stanfield, a fact which brings the case to us in a somewhat awkward posture. For example, the officers testified that *both* the front driver and passenger side windows were open, and that the cocaine was seen through the open passenger window. *See Stanfield*, 906 F. Supp. at 901. The district court, for reasons we find difficult to understand, rejected this testimony seemingly for the reason alone that it was fifty-nine degrees on the day in question, *and therefore* 'it seem[ed] more likely than not that [Stanfield] would have left the passenger's side window up." *See id.* at 303 n.5. Stanfield, for his part, testified that the passenger side window was raised and that Officer Mackel opened the passenger side door, climbed inside the vehicle, and searched under the back seat to find the cocaine. *See id.* at 302. The district court specifically found, however, that the cocaine was in plain view once Officer Mackel opened the passsnger side door and that Officer Mackel, contrary to Stanfield's contention, neither entered the vehicle nor searched under the vehicle's seat. *See id.* at 303 n.6.

sible because Stanfield did not have a legitimate expectation of privacy in the interior of his car. *See Stanfield*, 906 F. Supp. at 304 n.9. Second, the district court held that, under *Michigan* v. *Long*, 463 U.S. 1032 (1983), "Officer Mackel was Constitutionally permitted to open the door to determine whether there were other[] [occupants in the vehicle] and if any weapons were within Stanfield's immediate reach," determinations which the district court found were otherwise virtually impossible because of the heavy window tinting. *Stanfield*, 906 F. Supp. at 304; *see also id.* at 303-04 & n.11 ("[B]ecause Officer Mackel was unable to see through the heavily tinted windows of the Pathfinder, he had an objectively reasonable belief that Stanfield (or a hidden passenger) was potentially dangerous.").

Following the district court's denial of Stanfield's suppression motion, Stanfield pled guilty to one count of possession, reserving the right to appeal the district court's suppression ruling that is now before us. For the reasons that follow, we affirm.

II.

"[T]he 'touchstone of the Fourth Amendment is reasonableness.'" *Ohio* v. *Robinette*, 117 S. Ct. 417, 421 (1996) (quoting *Florida* v. *Jimeno*, 500 U.S. 248, 250 (1991)). And, as the Court explained in *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977), reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Id.* at 109 (quoting *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). Under this balancing test, the Supreme Court has consistently approved of protective searches of persons, vehicles, and even homes, during routine and other lawful investigatory detentions, in recognition oft he paramount interest in officer safety and the extraordinary risks to which law enforcement officials are exposed during such detentions.

Thus, for example, in *Terry* v. *Ohio*, 392 U.S. 1 (1968), the Court sanctioned the now-familiar "pat-down" search, or "frisk," because of the "immediacy" of the government's interest in officer safety, notwithstanding its conclusion that "[e]ven a limited search of the outer clothing for weapons constitutes a severe . . . intrusion upon cherished personal security." *Id.* at 24-25. If an officer possesses a reasonable belief based on "specific and articulable facts" that the suspect is potentially dangerous, *id.* at 21, reasoned the Court, then the officer is justified in undertaking the "limited steps" necessary to "protect himself and others from possible danger." *Id.* at 28.

Fifteen years later, in *Long*, the Court authorized what are essentially "frisks" of automobile interiors during traffic stops, *see Maryland* v. *Buie*, 494 U.S. 325, 332 (1990), holding that such protective searches are "justified by the principles . . . established in *Terry*." *Long*, 463 U.S. at 1046. Recognizing that all "investigative detentions involving suspects in vehicles are especially fraught with danger to police officers," *id.* at 1047, and accepting without discussion that an area search of a vehicle is less intrusive than the frisk of the person, the Court concluded that "the balancing required by *Terry* clearly weighs in favor of allowing the police to conduct an area search of the passenger compartment to uncover weapons, as long as they possess [a] reasonable belief that the suspect is potentially dangerous." *Id.* at 1051.[2]

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[2] The Court expressly extended *Terry* and *Long* in *Buie*, authorizing, "in conjunction with . . . in-home arrest[s]," 494 U.S. at 337, protective sweeps even fo personal residences, where a reasonably prudent officer, based upon articulable facts, would believe "that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* at 334 (stating that the adopted standard "is no more and no less than was required in *Terry* and *Long*, and as in those cases, we think this balance is the proper one."). Although the Court remanded for application of this standard, it concluded that, even though the suspect sought by police had been arrested and handcuffed, and all discernible threat to the police had

In *Mimms* and *Maryland* v. *Wilson*, 65 U.S.L.W. 4124 (Feb. 19, 1997), the Court even adopted bright-line rules that officers may, as a matter of course, order both drivers and passengers from vehicles during routine traffic stops in order to ensure that such stops are completed without incident.

The Court in *Mimms* held that the "inordinate risk" that exists every time "an officer . . . approaches a person seated in an automobile," 434 U.S. at 110, justifies a *per se* rule that drivers may be ordered out of their vehicles during lawful traffic stops, whether or not there exists any particular reason under the circumstances to believe that officer safety might be in jeopardy. In contrast to the substantial state interest in safety at stake when officers must approach a stopped vehicle, the Court characterized the additional intrusion on personal liberty occasioned by requiring drivers to exit their vehicles and to move off onto the shoulder of the road as "de minimis," "at most a mere inconvenience," *id.* at 111, and "hardly ris[ing] to the level of a 'petty indignity,'" *id.* (quoting *Terry*, 392 U.S. at 17), reasoning that "[t]he driver is being asked to expose to view very little more . . . than is already exposed" when the driver is seated in his automobile. *Id.*

Finally, repeating its oft-repeated observation that the government has a "legitimate" and "weighty" interest in officer safety, the Court in *Wilson* recently expanded the *Mimms per se* rule to allow officers to order not only drivers, but all occupants, to exit vehicles and move off onto the shoulder of the road during routine traffic stops. *See* 65 U.S.L.W. at 4126. While acknowledging that the

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been neutralized, a "cursory search" of Buie's house still might be permissible on the ground that the house could "harbor[] other persons who are dangerous and who could unexpectedly launch an attack" on the officers. *Buie*, 494 U.S. at 333. Not surprisingly, the Maryland Court of Appeals on remand did in fact hold that the cursory search of Buie's basement was reasonable. *See Buie* v. *Maryland*, 580 A.2d 167, 172 (Md. 1990).

passengers' liberty interests implicated by orders to exit vehicles might be stronger than those of the drivers, the Court nonetheless readily concluded that these interests likewise are "minimal" and necessarily must yield to the state's interest in officer safety, finding persuasive Maryland's comon-sense argument that every occupant in a vehicle "increases the possible sources of harm to the officer." *Id.*

A.

I.

Notwithstanding that the Court "generally eschew[s] bright-line rules in the Fourth Amendment context," *id.* at 4125 n.1; *see also Robinette*, 117 S. Ct. at 421, we believe that the Court's decisions in *Mimms* and *Wilson* in particular would support a holding that whenever, during a lawful traffic stop, officers are required to approach a vehicle with windows so heavily tinted that they are unable to view the interior of the stopped vehicle, they may, when it appears in their experienced judgment prudent to do so, open at least one of the vehicle's doors and, without crossing the plane of the vehicle, visually inspect its interior in order to ascertain whether the driver is armed, whether he has access to weapons, or whether there are other occupants of the vehicle who might pose a danger to the officers. Indeed, it seems to us that a contrary holding would not only be irreconcilable with, but arguably undermine altogether, the caselaw from the Supreme Court that was developed specifically for the purpose of protecting officer safety during what are, in today's society, frighteningly perilous encounters.

Even where the interiors of vehicles are fully visible, "roadside encounters between police and suspects are especially hazardous," *Long*, 463 U.S. at 1049, with as many as "30% of police shootings occur[ing] when a police officer approache[s] a suspect seated in an automobile," *Mimms*, 434 U.S. at 110; *see also Adams* v. *Williams*,

407 U.S. 143, 148 n.3 (1972). In fact, as the Court noted recently in *Wilson*, in 1994 alone, 5,762 assaults on police officers occurred during the course of traffic pursuits or stops. *See Wilson*, 65 U.S.L.W. at 4125 (citation omitted). Thus, "it [is] 'too plain for argument' " that the governmental interest in officer safety during traffic stops is substantial. *Id.* at 4125 (quoting *Mimms*, 434 U.S. at 110).

When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially, to the point, we believe, of unconscionability. *Indeed, we can conceive of almost nothing more dangerous to a law enforcement officer in the context of a traffic stop than approaching an automobile whose passenger compartment is entirely hidden from the officer's view by darkly tinted windows.* As the officer exits his cruiser and proceeds toward the tinted-windowed vehicle he has no way of knowing whether the vehicle's driver is fumbling for his driver's license or reaching for a gun; he does not know whether he is about to encounter a single law-abiding citizen or to be ambushed by a car-full of armed assailants. He literally does not even know whether a weapon has been trained on him from the moment the stop was initiated. As one officer put the obvious: "If the suspect has a weapon, I might not see it until he rolls down the window. He may just shoot me through the window."[3] If,

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[3] Leef Smith, "They're Dark No More," *The Washington Post*, Dec. 4, 1996, at VO4 (explaining that suspected gang members often drive around "in cars whose windows are all but blacked out," using the cover created by the tinting to "hide illegal activities") (statement of Officer Linda Hudson); *see also, e.g.*, Norman Peckham, "Phoenix Now Enforcing Window Tint Law," *The Tucson Citizen*, March 17, 1995, at 9E ("Heavy tint may conceal the fact that the occupant may have a weapon.") (statement of Officer Eugene Mejia); Caroline Lemke, "In the Dark: Tinted Windows Give Cars A Cool Look, But Some Are Illegal," *The Los Angeles*

as the Court has noted, officers face an "inordinate risk" every time they approach even a vehicle whose interior and passengers are fully visible to the officers, *Mimms*, 434 U.S. at 110, the risk these officers face when they approach a vehicle with heavily tinted windows is, quite simply, intolerable. In fact, it is out of recognition of just such danger that at least twenty-eight states, including Maryland, have now enacted laws either regulating or altogether prohibiting the use of tinted windows on vehicles in their states.[4]

In contrast to the indisputably substantial government interest in protecing its law enforcement officials from the

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Times, February 13, 1992, at 2 (When a car has tinted windows "[i]t is hard for an officer to see into [that] car. A gun could be pointed at you. It puts you in a vulnerable position.") (statement of Officer John Marinez).

[4] *See* Alabama Code § 32-5-215(e) (Michie 1996); Arkansas Code of 1987 Ann. § 27-37-306 (1987-95); Connecticut Gen. Stat. Ann. § 14-99g(b) (West 1996); Delaware Code Ann. § 21-4313 (1975-95); Code of Georgia § 40-8-73.1 (1982-96); Idaho Code § 49-944(1) (Michie 1948-96); West's Smith-Hurd Illinois Comp. Stat. Ann. § 5/12-503 (West 1996); West's Ann. Indiana Code § 9-19-19-4(c) (West 1996); Baldwin's Kentucky Rev. Stat. Ann. § 189.110(3) (Banks-Baldwin 1996); West's Louisiana Stat. Ann. § 361.1 (West 1996); Maine Revised Stat. Ann. § 29-1916(3) (1996); Ann. Code of Maryland § 22-406 (Michie 1957-96); Michigan Comp. Laws Ann. § 257.709 (1996); Mississippi Code 1972 Ann. § 63-7-59 (1995); Montana Code Ann. § 61-9-405 (1978-95; Nebraska Rev. Stat. of 1943 § 60-6,257 (1995); Nevada Rev. Stat. § 484.6195 (1995); New Hampshire Stat. Ann. § 265-95 (1995); Gen. Stat. of North Carolina § 20-127(b) (Michie 1944-96); North Dakota Century Code § 39-21-39 (Michie 1995); Baldwin's Ohio Rev. Code Ann. § 4513.241 (Baldwin-Banks 1996); 1995 Oregon Rev. Stat. § 815.221 (1995); Code of Laws of South Carolina 1976 Ann. § 56-5-5015 (1995); Tennessee Code Ann. § 55-9-107 (1955-96); Utah Code, 1953 § 41-6-149 (Michie 1987-96); Code of Virginia § 46.2-1052(C)(1) (Michie 1982-96); Wyoming Stat.) 1997 § 31-5-962(b) (1977-96); West's Revised Code of Washington Ann. § 46.37.430(5) (1996). The District of Columbia and Puerto Rico have done so as well. *See* District of Columbia Code 1981 § 40-718.1 (1981-96); Laws of Puerto Rico Ann. § 9-1134 (1994).

danger that inheres in the lawful stop of a vehicle with heavily tinted windows, the privacy and liberty interests implicated by the opening of such a vehicle's door for the limited purpose of determining whether the vehicle is occupied by one or several persons and whether the vehicle's occupants are armed or have access to weapons, are, although not unimportant, comparatively minor, and will always be so.

It is axiomatic, of course, that "[o]ne has a lesser expectation of privacy in a motor vehicle," in part because "its function is transportation and it seldom serves as one's residence or as the repository of personal effects." *United States* v. *Chadwick*, 433 U.S. 1, 12 (1977) (quoting *Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion)). Because of this, and the fact that vehicular travel is, of necessity, highly regulated, individuals traveling in vehicles "must expect that the State, in enforcing its regulations, will intrude to some extent" on their privacy. *New York* v. *Class*, 475 U.S. 106, 113 (1986).

But, apart from the fact that there is a considerably reduced privacy interest in a vehicle's interior passenger compartment as a matter of law, the driver and other occupants of a lawfully stopped vehicle have already had their liberty curtailed. Moreover, because the driver must comply with routine requests for identification and registration, he will be required at some point during the brief detention to expose the interior compartment of his vehicle to view through at least one window, if for no other reason than to interact with the officer. Of course, when the driver lowers the window, then much if not all of the car's interior will be visible to the officer. The additional interference with the occupants' privacy interests affected by the opening of one of the vehicle's doors would seem minimal when measured against the enormous danger law enforcement officers face when they approach a vehicle with heavily tinted windows. Such an intrusion would seem considerably less than the intrusions affected by

ordering the driver and passengers to exit the vehicle and to proceed to the shoulder of the road, which were held in *Mimms* and *Wilson*, respectively, to be *"de minimis"* in comparison to the states' interests in protecting their law enforcement personnel under circumstances far less inherently dangerous than those existing when the stopped vehicle has heavily tinted windows. Not ony does the person subjected to the limited search entailed in the opening of the vehicle door not have his entire body exposed to the view of the officers and public, he also retains his liberty interest in remaining seated in his automobile during the duration of the detention. Indeed, the actual invasion of privacy entailed in an officer's opening of the vehicle door is indistinguishable from, if not precisely the same as, that which occurs when an occupant is required to open a door to exit a vehicle pursuant to an order given under the authority of *Mimms* or *Wilson*.

2.

Even if there were reasonable alternatives to allowing officers to open the door of a vehicle with heavily tinted windows in order to ascertain whether the driver is armed and whether there are other occupants in the vehicle, we would hesitate to impose them on the law enforcement community as a matter of constitutional law. As the Supreme Court has been at pains to observe, during *Terry*-type stops, officers "must make . . . 'quick decision[s] as to how to protect [themselves] and others from possible danger' " at times when they are "particularly vulnerable," and thus it has "not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in [such an] encounter." *Long*, 463 U.S. at 1052 (quoting *Terry*, 392 U.S. at 28); *see also id.* at 1052 n.16. That is, the Court has scrupulously avoided substituting its judgment for that of law enforcement as to how best to ensure officer safety.

With that said, however, we are at a loss to identify an acceptable alternative to a rule such as that we suggest

would be justified. Upon a moment's reflection, it becomes apparent that neither requiring officers (while in their cruisers or as they proceed toward the stopped vehicle) instead to order occupants to exit the vehicle nor requiring that they order that all of the vehicle's doors be opened, represents an acceptable, or even a reasonable, alternative. To require officers to order the vehicle's occupants to exit as the officers approach the stopped vehicle exposes the officers to the very danger to which we believe it is unconscionable to subject them, namely, that they might be fired upon as they approach the vehicle. As the Court observed in *Terry*, it is by definition "unreasonable to require that police officers take unnecessary risks in the performance of their duties." 392 U.S. at 23. On the other hand, to insist that officers remain in their vehicles and order the occupants out ignores the fact that, with heavily tinted windows, the officers could never know whether all of the vehicle's occupants had exited; and, eventually, the officers would still be required under this alternative to approach a vehicle which, insofar as the officers could know, still held passengers who might be armed and dangerous. Ordering that the vehicle's doors be opened, of course, allows the vehicle's occupants legitimately to move about the vehicle in ways that would enable them to access available weapons, which represents a separate danger unto itself.

Therefore, in the end, we believe, it will be impractical, if not impossible, for law enforcement officers to neutralize the dangers to which they are exposed by virtue of heavily tinted windows. There simply do not appear to be any alternatives to the bright-line rule we suggest, which would infringe less on the residual privacy interests that drivers and passengers retain in the interior compartment of a lawfully stopped vehicle, yet still allow law enforcement officers to take that control of the situation that enables them to minimize the risk of harm to themselves and to the vehicle's occupants. *Cf. Wilson*, 65 U.S.L.W. at 4126 ("The risk of harm to both the police and the occu-

pants is minimized if the officers routinely exercise unquestioned command of the situation." (quoting *Michigan v. Summers*, 452 U.S. 692, 703 (1981)). A bright-line rule that officers could always pursue the course of opening the door of a tinted-windowed vehicle when, in their informed judgment, such an act appears necessary to protect their safety, would not render the stops of such vehicles risk-free, but it would at least reduce to an extent the enormous danger to which law enforcement authorities are exposed as a consequence of the advent of tinted windows.

B.

Even absent a *Mimms/Wilson*-type *per se* rule that officers may, in the circumstances we have described, open a vehicle's door to determine the number of occupants within and whether any of those occupants are armed or have access to weapons, however, Officer Mackel's opening of Stanfield's passenger door was fully authorized under the principles, if not by the direct holdings, of *Terry*, *Long* and *Buie*. Officer Mackel's belief that he was potentially in danger as he approached Stanfield's Pathfinder was imminently reasonable; it would be folly to suggest otherwise. Under *Terry*, *Long* and *Buie*, therefore, it is clear that Officer Mackel could have conducted a protective search of the entire interior compartment of Stanfield's vehicle to ensure his safety and that of his partners. It follows *a fortiori* that Officer Mackel's much more limited search of merely opening the Pathfinder's door was reasonable under the Fourth Amendment.

As our previous discussion suggests, we are convinced that the presence of windows so tinted that the vehicle's interior compartment is not visible is, in itself, a circumstance that would cause an officer reasonably to believe that his safety might be in danger—as the district court held. When the fact of the tinted windows on Stanfield's Pathfinder is considered together with the other circumstances informing Officer Mackel's judgment as he ap-

proached Stanfield's vehicle on the morning of April 29, 1996, we are satisfied that no reasonable officer would have failed to appreciate the potential danger confronting Officer Mackel and his partners.

First, Stanfield was, at the time of the stop, in violation of the state's traffic laws, having parked his Pathfinder in the middle of a two-way street, which was not passable by two cars simultaneously. *See Stanfield*, 906 F. Supp. at 301. Second, Stanfield's vehicle was stopped in the early morning in a relatively deserted area of town. *See id.*; J.A. at 128. Third, Stanfield's vehicle was stopped in an area of Baltimore known for its open narcotics trafficking and high crime rate. *See Stanfield*, 906 F. Supp. at 301; J.A. at 53. As we have often noted, where there are drugs, there are almost always guns. And, as the Supreme Court has recognized, in a high crime area, "the possibility that any given individual is armed is significant." *Buie*, 494 U.S. at 334 n.2. Fourth, Stanfield was driving a vehicle which, according to the officers' testimony and the district court's factual finding, "is of the class of four wheel drive vehicles favored by drug dealers," and is also "the preferred target of car thieves." *Stanfield*, 906 F. Supp. at 301 & n.3; J.A. at 163-64. Fifth, as the district court found, the officers did not know and could not determine, because of the tinting on the windows, "whether Stanfield was alone or whether any weapon was within arms reach of the defendant." *See Stanfield*, 906 F. Supp. at 303. And, sixth, as the district court found, Stanfield had been seen by the officers conversing with William Staten, a known drug dealer, immediately prior to his encounter with Officers Mackel, Buie and Hamel. *Id.* at 301, 304 n.10; J.A. at 151-52, 237 (testimony of Officer Mackel); J.A. at 19 (Government's Memorandum of Law in Response to Defendant's Motion to Suppress Evidence).[5] Only the most foolhardy

[5] Although the government opposed Stanfield's suppression motion, *see* Government's Memorandum of Law in Response to Defendant's

would not have believed that his safety was "potentially" in danger, *see Long*, 463 U.S. at 1051, as he approached Stanfield's Pathfinder.

Motion to Suppress Evidence, J.A. at 18-40, on appeal it inexplicably conceded error and then went to quite unusual lengths to have the case decided on the briefs and without oral argument. Unwilling to reverse the district court's judgment summarily, we ordered the reluctant Assistant United States Attorney, Philip S. Jackson, to appear and argue the case. When confronted by the court with the Supreme Court authorities described above, and questioned why he was unable even to advance good-faith arguments before this court in support of the district court's judgment, Mr. Jackson represented to the court that he had confessed error solely because, in his view, there was no basis for the district court's finding that Staten was a known drug dealer, a view that was nowhere mentioned in the government's three and one-half page brief. Mr. Jackson thereafter, however, conceded that neither he nor the United States had any basis at all for challenging the district court's finding as clearly erroneous, ultimately acknowledging that if that finding were sustained, the United States had improperly confessed constitutional error.

We find the district court's finding to be amply supported by the record, especially the testimony of Officer Mackel, in response to questions from Stanfield's counsel:

> Q: What really happened here was that you were on routine patrol, in your bullet proof vests, and you saw Mr. Stanfield talking to someone who you knew, isnt' that correct?
>
> A: Once I pulled into the block, that is correct. I recognized who it was.
>
> . . .
>
> Q: . . . Now, when you saw Mr. Stanfield talking to someone, isn't it true that that is why you really stopped your vehicle and got out of the car and started investigating Mr. Stanfield?
>
> A: No.
>
> Q: Isn't it true that that person [Staten] you had known through previous, I guess through some previous dealings, that he might be or was a law breaker?
>
> A: Yes, I had dealings with Mr. Staten before.

[Continued]

There was more reason for Officer Mackel to believe that his safety might be in danger than there was in *Long* for Deputies Howell and Lewis to believe that their safety

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[5] [Continued]

Q: And the real reason you got out of the car, all three of you, had nothing to do with being double parked, but you wanted to see what was up, isn't that correct?

A: No, that is not true.

Q: And you really, all you really had was a hunch and you just wanted to go in and see what was up?

J.A. at 152.

It is plain from this exchange between defendant's own counsel and Officer Mackel that defense counsel himself understood that Officer Mackel had previously had "dealings" with Staten in connection with drug transactions. Stanfield even contended to the district court that, as the officers exited their cruiser, "one of the officers then shouted up to Williams [Staten] and asked [Staten] whether he had stopped dealing drugs." *See* J.A. at 238.

It is plain that defense counsel's strategy was to develop a case that the officers had relied upon the pretext of Stanfield's traffic offense to investigate their "hunch" that, because Stanfield was talking to a known drug dealer, he might be engaged in a drug transaction, and, in fact, this was the very argument defendant advanced before the district court, *see* J.A. at 238 (opinion of district court) ("Stanfield argues that the officers were not attracted to him because of any traffic violation but because they were investigating drug trafficking."). Indeed, although Stanfield (for obvious reasons) does not mention the officers' previous dealings with Staten in his submissions to this court, one of Stanfield's two assignments of error from the district court's denial of his suppression motion was that the officers acted only on this hunch. *See* Appellant's Br. at 2-9.

It is evident, therefore, that the district court's finding that Stanfield was talking with a man known by the officers to be a drug dealer is unassailable. The Assistant United States Attorney himself, albeit in direct contradiction of his own representations before us, even represented to the district court that "[a]n officer recognized th[e] individual [to whom Stanfield was talking] as William Staten, an individual about whom [the officer] had received information indicating Staten's involvement in the distribution of controlled substances." *See* Government's Memorandum of Law in Response to Defendant's Motion to Suppress Evidence, J.A. at 18, 19.

might be in danger. The Supreme Court there held that Howell and Lewis were "clearly justified" in their conclusion that Long might pose a danger to them were he allowed to reenter his vehicle because (1) "[t]he hour was late and the area rural," (2) Long had been speeding and had swerved into a ditch, (3) Long had appeared to be under the influence of an intoxicant, and (4) the officers had seen a hunting knife on the floorboard of Long's car.[6] 463 U.S. at 1050. The Court readily reached this conclusion notwithstanding that the officers had already completed their detention of the suspect without incident; they knew that there were no other occupants in Long's vehicle; they also knew that there was no one else in the vicinity who could pose an immediate threat to their safety; they knew that Long did not have a weapon on his person; they had determined that, although Long was not impaired sufficiently that he could not drive, he was

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[6] When listing the circumstances supporting the reasonableness of the officers' belief that they might be in danger if Long were allowed to reenter his vehicle, the Court did, as noted, mention that the officers had earlier seen the hunting knife on the floorboard of Long's automobile. It is relatively clear, however, that the knife was mentioned more in support of the court's alternative holding that the search of Long's person was also reasonable, and that the presence of the knife played little, if any, role in the Court's determination that Officers Howell and Lewis were reasonable in their belief that their safety might be at risk if Long were allowed to reenter his car, *see* 463 U.S. at 1050 & n.15. When it mentioned the knife, the Court even noted that "*Long was not frisked* until officers observed that there was a large knife in the interior of the car into which Long was about to reenter," *id.* at 1050 (emphasis added), and, as the Court had noted earlier, after observing the knife on the floorboard, "[t]he officers [had] stopped Long's progress and subjected him to a *Terry* protective pat-down." *Id.* at 1036. As the Court explained, the question with respect to the search of the vehicle's passenger compartment was whether the officers acted "unreasonably in taking preventive measures to ensure that there were no *other* weapons [other than the knife] within Long's immediate grasp before permitting him to reenter his automobile." *Id.* at 1051 (emphasis added).

unlikely to initiate an assault on the officers; and they had reason to believe that Long wished to leave the scene without further involvement with the authorities.

In contrast, here, Officers Mackel, Buie and Hamel had just initiated their encounter with Stanfield, who was driving a vehicle not uncommonly associated with drug activity; they were in a high crime area known for its open drug trafficking; they had, only moments earlier, seen Stanfield talking with a known drug dealer; they did not know whether Stanfield was alone or accompanied by others; they were unable, because of the tinting of the windows, to determine whether Stanfield, or any other occupants of the vehicle, were presently armed or had ready access to weapons; and they had no reason to think Stanfield might be incapacitated in such a way as actually to reduce any threat he might pose to them.

If there was less reason for Officer Mackey to believe that he might be in danger than there was in *Terry* for Officer McFadden to believe he might be in danger, we are satisfied that the difference is not significant enough to warrant a different conclusion as to the reasonableness of Officer Mackel's perception of possible danger, especially given the greater vulnerability of the officers here because of the heavy tinting of the Pathfinder's windows. Officer McFadden had observed conduct by Matthew Terry and his companions that was entirely innocent in itself, although suspicious to McFadden, a trained officer, who recognized the conduct as "consistent with [an] hypothesis that the[ ] men were contemplating a daylight robbery." *Terry*, 392 U.S. at 28. Under these circumstances, observed the Court, it was reasonable for Officer McFadden to assume that one or more of the men might be armed. Here, of course, Stanfield was not engaged in entirely innocent behavior; he was actually committing an offense, albeit a relatively minor traffic offense, when he was stopped. And, it bears repeating, he was stopped in an area of the city known for its open drug trafficking, in a vehicle frequently associated with drug activity, and

he was talking with a known drug dealer. A trained officer certainly would be as warranted in believing that his safety might be in danger in these circumstances as in those present in *Terry*. Of course, in neither instance need the officer have been "absolutely certain that the individual [was] armed; the [only question] is whether a reasonably prudent man in the circumstances would [have been] warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. As to this question, in this case, we have no doubt whatsoever.

Although the Court in *Buie* did not itself resolve the ultimate issue of whether the protective sweep undertaken by the officers was justified under the *Terry* and *Long* standard, which the Court there held was applicable to the officers' sweep of Buie's home, the Court specifically analogized law enforcement's interest "in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack," to the "immediate interest of the police officers [in *Terry* and *Long*] in taking steps to assure themselves that the persons with whom they were dealing were not armed with, or able to gain immediate control of, a weapon that could unexpectedly and fatally be used against them." *Buie*, 494 U.S. at 333. The Court noted that an in-home arrest, unlike the typical encounter on the street, "puts the officer at the disadavntage of being on his adversary's 'turf[,]' [and that] [a]n ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings." *Id.* Even so, however, the Court was hesitant to characterize either the risk of danger during an in-home arrest or the risk of danger in an "on-the-street or roadside investigatory encounter" as the greater. *Id.* Based upon these overarching observations concerning the relative risks associated with in-home arrests and traffic stops, and with due regard to the releveant specifics, we are even unprepared to say that the risk of danger to Officers Mackel,

Buie, and Hamel was less pronounced than was the risk to the officers in *Buie*.

First, and most significantly, any difference between the inherent risk existing during an in-home arrest and a lawful investigatory traffic stop due to the officers' lack of familiarity with the surroundings, was minimized, if not entirely eliminated, in this case, because the interior of Stanfield's vehicle was not visible to the officers. Through the use of heavy tinting, the driver and occupants of a vehicle effectively secure for themselves, as Stanfield did in this case, a "confined setting of unknown configuration," forcing law enforcement authorities to confront them on their own "turf"—not unlike if they were hiding in their home. Second, some six or seven officers were present at Buie's residence to affect the arrest, whereas only three officers, were investigating Stanfield. Third, the officers in *Buie* had proceeded to Buie's house for the specific purpose of arresting Buie and were fully prepared for anything that might develop in connection with that assignment; unlike Officers Mackel, Buie, and Hamel, they had not simply come upon Buie unexpectedly in circumstances requiring a quick, on-the-street judgment. Fourth, the officers had already arrested Buie and had only to depart the residence and premises; at the time of their search of Buie's statement, the officers were not merely beginning their investigatory detention, as in the case *sub judice*, when a confrontation is more likely. Fifth, two days had lapsed since the robbery in *Buie*, and, although it was certainly not unreasonable to think someone (in particular, Buie's accomplice) might be hiding in the house with Buie, the officers had nothing specific to support such an inference. As the dissenting judge on the Maryland Court of Appeals said in his opinion on the remand from the Supreme Court:

> From the information elicited at the suppression hearing, we do not know whether Allen [Buie's accomplice] had been arrested or was still at large. The

> testimony at the hearing does not give any indication that Allen was seen entering or leaving Buie's home during the three day surveillance period. In fact, there was no testimony that placed Allen at Buie's home at any time prior to Buie's arrest. Neither is there information as to what type of relationship Buie and Allen had; that is, we do not know whether they were longtime friends who spent a great deal of time together or whether the only time they were ever together was the night of the alleged robbery.
>
> The inconclusive surveillance . . . does not help the State. It surely does not permit the inference that the police thought Allen was at Buie's house, for if they had believed that they would have brought along his arrest warrant as well as Buie's.

Buie v. *Maryland*, 580 A.2d 167, 173-74 (Md. 1990) (Adkins, J., dissenting). Here, of course, while Officers Mackel, Buie, and Hamel likewise had no specific reason to believe that there were other passengers in the Pathfinder, they did know that there was someone in the vehicle (Stanfield) who, for the reasons earlier recited, potentially might be dangerous.

In contrast to the substantial state interest in having the investigatory detention necessitated by Stanfield's traffic infraction conclude without harm to its law enforcement officials, the liberty and privacy interests which Stanfield attempts to protect are, for the reasons previously discussed, notably insubstantial. Additionally, because, even according to Stanfield, the driver's side window was down when the officers approached the Pathfinder, the interior of Stanfield's car, as well as contents lying exposed on the back seat, were fully open to the view of the officers and passersby.[7] Even had all of the Pathfinder's

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[7] This fact, of course, suggests that the district court's denial of Stanfield's suppression motion might well be sustainable on the alternative ground that the cocaine would inevitably have been

windows been raised, the undisputed evidence in the record before us is that Stanfield's tinted windows would not have prevented passersby from viewing the Pathfinder's interior under all lighting conditions. *See* J.A. at 88. Hence, it was only because of the mere happenstance of cloud cover that the back seat of Stanfield's car was not visible, just as in *Texas* v. *Brown*, 460 U.S. 730 (1983), the interior of the open glove compartment was not visible to the officer only because of the happenstance that the stop occurred at night. Therefore, as the district court alternatively held, it is questionable whether Stanfield had any privacy right at all in those portions of his interior passenger compartment relevant in this case, for there is no legitimate expectation of privacy "shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers." *Id.* at 740.

Assuming that Stanfield did have some residual privacy interest in the interior compartment of his car, the additional intrusion on that interest that resulted from the mere opening of the passenger door was inconsequential. There is, of course, no comparison between the "severe," "surely . . . annoying, frightening, and perhaps humiliating" pat-down of the person authorized by the Court in *Terry*, 392 U.S. at 24-25, and the incremental additional intrusion on Stanfield's privacy interests affected by the mere opening of his passenger door. Similarly, the protective sweep of the home authorized by the Court in *Buie*, pursuant to which the police were authorized to search closets, showers, attics, studies, basements, and under-

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discovered by Officer Buie or Officer Hamel, even had it not been discovered by Officer Mackel. Where the preponderance of evidence establishes that the information would "ultimately or inevitably" have "been discovered by means wholly independent or any constitutional violation," the inevitable discovery exception to the exclusionary rule allows the prosecution to admit the evidence obtained through an illegal search. *Nix* v. *Williams*, 467 U.S. 431, 443 (1984).

neath beds, was much more offensive to privacy interests than was the search here. And, obviously, the opening of the car door and perusal of the car's interior from the outside interfered less with Stanfield's privacy interest than would have a complete search of the vehicle's interior permitted under *Long*, which could have included visual inspection of any area in which a weapon might have been secreted.

We even believe, as explained *supra*, that the intrusion affected by Officer Mackel's mere opening of the passenger door of Stanfield's Pathfinder was considerably less than those intrusions authorized as a matter of course by the Court in *Mimms* and *Wilson*. The opening of the door of the Pathfinder exposed to view little more of Stanfield's body than was already exposed to view through the open driver side window and little more of the interior compartment than was visible through that same window. And, in contrast to the action that may be ordered under *Mimms* and *Wilson*, the mere opening of the door did not require Stanfield (nor would it have required any other occupants of the vehicle) to move at all.

In sum, when the state's substantial interest in ensuring that its investigatory detention of Stanfield occurred without incident to its law enforcement agents is weighed in the balance with Stanfield's privacy interests implicated by Officer Mackel's search, there can be no doubt but that the search was reasonable under the circumstances and appropriately limited in scope. What was said of Officer McFadden's actions in *Terry* is no less true of Officer Mackel's actions here:

> We cannot say his decision [to open the passenger door to Stanfield's Pathfinder in order to determine whether there were other passengers in the vehicle or whether the driver or other had access to weapons] was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a

> policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

392 U.S. at 28. To hold otherwise than we do today would be "to require that police officers take unnecessary risks in the performance of their duties," *Terry*, 392 U.S. at 23, something which, as the Supreme Court has consistently held, the Constitution does not require.[8]

III.

Because Officer Mackel was engaged in a reasonable protective search when he opened Stanfield's passenger door for the limited purpose of determining whether Stanfield was armed and whether there were any other occupants within the vehicle who might pose a danger to him or his partners, and because the cocaine that Stanfield seeks to suppress was seen by Officer Mackel in plain view during the conduct of this reasonable search, the district court's denial of Stanfield's motion to suppress is affirmed.

AFFIRMED

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[8] Stanfield also argues that the initial seizure of his vehicle was illegal because the officers stopped his vehicle in order to investigate possible drug trafficking, not, as the officers contended, because he was in violation of the state's traffic laws. *See supra* note 5. Because, as the Supreme Court has recently held, an officer's subjective state of mind in stopping a vehicle is irrelevant to the constitutionality of the stop, *see Robinette*, 117 S. Ct. at 420 (" 'Subjective intentions to play no role in ordinary, probable-cause Fourth Amendment analysis.' " (quoting *Scott* v. *United States*, 436 U.S. 128, 138 (1978)); *Whren*, 116 S. Ct. at 1174 ("[Our] cases foreclose any argument that the constitutional reasonableness of a traffic stop depends on the actual motivations of the individual officers involved."), the district court was unquestionably correct in rejecting this argument.

APPENDIX B

UNITED STATES DISTRICT COURT
D. MARYLAND

Civ. No. L-95-0191

UNITED STATES OF AMERICA

v.

BILLY STANFIELD.

Nov. 2, 1995

MEMORANDUM

LEGG, District Judge.

Before the Court is defendant Billy H. Stanfield's motion to suppress physical evidence. On September 13, 1995 and October 16, 1995, the Court held evidentiary hearings in which Officers Kevin Buie and Avon Mackel of the Baltimore City Police Department testified. Defendant cross-examined the Government's witnesses and also testified on his own behalf.[1] For the reasons set forth below, the Court hereby DENIES defendant's motion.[2]

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[1] Prior to taking the stand, defendant was informed of the consequences of testifying by both his counsel and the Court. Defendant acknowledged that he understood his rights and agreed to waive his Fifth Amendment privilege for the limited purpose of testifying at this suppression hearing.

[2] Defendant's motion originally sought to suppress both the physical evidence found in defendant's car and the physical evidence

I. FACTS

A. *The Officers' Testimony*

Officers Buie and Mackel testified that on morning of April 29, 1994, they and Officer Michael Hamel, also of the Baltimore City Police Department, were patrolling, in an unmarked car, the area around Parrish Street in west Baltimore. The neighborhood surrounding Parrish Street is poor and suffers from a high crime rate and open narcotics trafficking. The officers had no specific objective, but were generally on the look-out for drug activity. Due to the danger of their assignment, the officers were fully armed and wore bulletproof vests over their uniforms.

At approximately 9:00 a.m., the officers were driving eastbound on Mosher Street when they reached the intersection of the 900 block of Parrish Street. Looking south down Parrish Street, they noticed a late model, black Nissan Pathfinder with heavily tinted windows. The Pathfinder was stopped in the middle of the street facing southbound.

As Officer Mackel testified, Pathfinders are of the class of four wheel drive vehicles favored by drug dealers.[3] Deciding to investigate, the officers circled the block. Seeing that the Pathfinder had not moved, they turned onto Parrish Street and drove northbound towards the Pathfinder.

Officer Mackel, who was driving, said that he was attracted to the Pathfinder because it was blocking Parrish Street in violation of Md. Transportation Code Ann. §§ 21-1003(r) and 27-101(a) & (b). Although Parrish Street is narrow and could be mistaken for an alley, it is

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found in Stanfield's apartment during a search subsequent to his arrest. After Government counsel agreed that it would not seek to introduce certain of the seized items at trial, defendant agreed to withdraw the motion to suppress as to the search of his apartment.

[3] Pathfinders are also a preferred target of car thieves.

open to both north and southbound traffic. Officer Mackel's stated that he intended to investigate the Pathfinder and ticket the driver, if warranted.

Once stopped in front of the Pathfinder, the officers quickly left their unmarked car and approached the Pathfinder from both sides. While doing so, they noted that the driver had been talking to a man leaning from a second story window. The officers recognized the man as William Stanton, a known drug dealer.

Officers Hamel and Buie walked up to the Pathfinder from the driver's side while Officer Mackel, acting as back up, walked around to the passenger's side. According to the officers, the front windows on both the passenger's and driver's side were rolled down, allowing them to see into the car from both directions.

Officers Buie and Hammel began to question Stanfield, asking him for his driver's license and registration. Officer Mackel testified that he looked through the open passenger's side window and saw an overturned brown paper bag on the back seat. The mouth of the bag was open and its contents were partially visible. Officer Mackel testified that he could clearly see, protruding past the mouth of the bag, the tip of a plastic bag containing a light tan substance. Recognizing this substance as cocaine or crack, Officer Mackel called out, "1030," a signal requesting the other officers to place Stanfield under arrest.

Officer Buie testified that prior to hearing Officer Mackel's cry, he had been talking to Stanfield, who appeared calm and cooperative. Upon hearing "1030," Officers Buie and Hamel placed Stanfield under arrest. Later, the officers conducted a thorough search of the Pathfinder and discovered over 200 grams of cocaine, a nine millimeter semi-automatic handgun, two contact pagers, and other items.

B. *Stanfield's Testimony*

Defendants concedes that these items were discovered in his car. Stanfield contends, however, that Officer Mackel stopped and search his vehicle without his permission and in violation of the Fourth Amendment. The following reflects Stanfield's version of his arrest.

Stanfield argues that the officers were not attracted to him because of any traffic violation but because they were investigating drug trafficking. The police pulled their car in front of his Pathfinder, effectively blocking him, and quickly exited their vehicle. Stanfield says one of the officers then shouted up to William Stanton and asked Stanton whether he had stopped dealing drugs.

According to Stanfield, only the driver's side window was down and because of the window's heavy tint, it was impossible for Officer Mackel, standing outside of the Pathfinder, to see the back seat—much less identify any object lying upon it. Officer Mackel, unbidden, opened the passenger door, climbed inside, and searched under the seat, where he discovered Stanfield's hidden bag of cocaine. Officer Mackel then called out, "1030" and Stanfield was placed under arrest. A more thorough search of the car ensued.

C. *The Court's Findings of Fact*

The Court cannot accept the officers' testimony in its entirety. In order to do so, the Court would be required to find that: i) the officers' attention was drawn to the Pathfinder solely because of the traffic violation; ii) the passenger's side window was down; iii) the paper bag containing the bricks of cocaine was on the back seat; and iv) a brick of cocaine was protruding from the mouth of the bag.

By rejecting parts of this scenario, the Court does not find that the officers testified falsely or behaved improperly. The Court concludes only that, because the chain

of coincidences exceeds the normal bounds of probability, the Government has failed to meet its burden of proof.[4]

The Court, based upon its assessment of the evidence, finds that the following events most probably occurred. While patrolling, the police saw a late model Pathfinder, a car associated with drug dealing, stopped in the middle of Parrish Street for no apparent reason. Suspecting possible drug activity, they decided to investigate. Because the Pathfinder was stopped in violation of state traffic codes, they were provided the opportunity to do so.

When the police car blocked Stanfield's car and the police surrounded the Pathfinder, Stanfield was effectively seized. No reasonable person in Stanfield's position would have felt free to leave. *See e.g., Florida v. Royer*, 460 U.S. 491, 502, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983); *United States v. Wilson*, 953 F.2d 116 (4th Cir.1991).

At that time, only the driver's side window was down[5] and because the windows were heavily tinted, the officers

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[4] "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). Because the police had no warrant to search Stanfield's Pathfinder, the burden rests on the Government "to show the existence of such an exceptional situation." *United States v. Dart*, 747 F.2d 263 (4th Cir. 1984) citing *Vale v. Louisiana*, 399 U.S. 30, 34, 90 S.Ct. 1969, 1971, 26 L.Ed.2d 409 (1970).

[5] Contradictory testimony was provided during the hearing as to the weather on the morning of April 29, 1994. The officers testified that the weather was sunny and warm, while Stanfield testified that the skies were overcast and the temperature cool. Following the evidentiary hearing, the Government submitted the official weather report of the United States Weather Service at Baltimore Washington International Airport. At 9:00 a.m., the temperature was 59 degrees and the sky was cloudy.

Because the weather was brisk and Stanfield was carrying a bag of cocaine, it seems more likely than not that he would have left the passenger's side window up.

could not see into the Pathfinder. Thus, they did not know whether Stanfield was alone or whether any weapon was within arms reach of the defendant. Officer Mackel, unbidden, opened the passenger side door. He saw on the back seat a paper bag and observed a light tan powdery substance in its mouth.[6] Officer Mackel recognized the substance as cocaine or crack and ordered the arrest of Stanfield. Based on these findings of fact, the Court will examine the Constitutional implications of this event.

II. DISCUSSION

A. *Seizure of Defendant's Vehicle*

The temporary seizure of defendant's car did not violate the Fourth Amendment even if the officers' subjective motivation was to investigate possible drug trafficking. The Supreme Court has long held that whether the Fourth Amendment has been violated turns on "an objective assessment of the officer's actions in light of the facts and circumstances confronting him . . . and not on the officer's actual state of mind at the time the challenged action was taken." *Maryland v. Macon*, 472 U.S. 463, 470, 105 S.Ct. 2778, 2782, 86 L.Ed.2d 370 (1985) (quoting *Scott v. United States*, 436 U.S. 128, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978).

Under this objective test, the Court must disregard the officers' subjective motivation and determine if the objective facts gave them the authority to stop Stanfield's car. *United States v. Hassan El*, 5 F.3d 726 (4th Cir.1993), cert. denied, —— U.S. ——, 114 S.Ct. 1374, 128

[6] The Court rejects Stanfield's testimony that the drugs were located under the car seat and that Officer Mackel found them only after a search. Because of the heavy tint of the windows, Stanfield may have felt that the bag, which was not visible from the outside, was sufficiently hidden. The Court, therefore, accepts Officer Mackel's testimony that the drugs were in plain view (once he opened the car door).

L.Ed.2d 50 (1994). It is uncontroverted that the Pathfinder was illegally stopped in the middle of a two-way street. Thus, the officers were permitted to detain Stanfield for the legitimate purpose of investigating this infraction. The traffic violation, no matter how minor, makes the stop permissible.[7]

B. *Search of Defendant's Car*

Police officers expose themselves to danger whenever they approach a car, even during a routine traffic stop.[8] Thus, such officers are entitled to look through the windows to determine how many people are in the car and to ensure that the occupants are not armed or dangerous.[9] The Supreme Court has gone so far as to hold that officers may even use flashlights to examine the interior of cars during such traffic stops. *Brown*, 460 U.S. 730, 103 S.Ct. 1535.

In the instant case, however, the officers, upon approaching the Pathfinder, were unable, due to the heavy tinting of its windows, to see inside the care and determine

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[7] In *Hassan El*, the Fourth Circuit held that

> [I]f an officer has probable cause or a reasonable suspicion to stop a vehicle, there is no intrusion upon the Fourth Amendment. That is regardless of the fact that the officer would not have made the stop but for some hunch or inarticulable suspicion of other criminal activity.
> 5 F.3d at 703.

[8] The Court notes that in Maryland, police officers making routine traffic stops have been killed by drug couriers. On October 17, 1995, State Trooper Edward A. Plank was shot and killed by two men he had pulled over for speeding. At the time, the two men were transporting $83,000 worth of crack and cocaine and were armed with a semi-automatic .45-caliber handgun.

[9] This intrusion is Constitutionally permissible not only for the protection of the police but because the officers are not violating any legitimate expectation of privacy. *Texas v. Brown*, 460 U.S. 730, 740, 103 S.Ct. 1535, 1542, 75 L.Ed.2d 502 (1983).

whether Stanfield was unarmed and alone.[10] Thus, Officer Mackel was Constitutionally permitted to open the door to determine whether there were others in the car and if any weapons were within Stanfield's immediated reach.[11] *Long*, 463 U.S. 1032, 103 S.Ct. 3469.

Once the door was open, Officer Mackel saw the bag of cocaine. Because Officer Mackel was legally in a position from which he could see the bag in plain view, Officer Mackel was authorized to seize the cocaine. The officers, therefore, had probable cause to arrest Stanfield and conduct a search of the interior of his vehicle. *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).

III. CONCLUSION

For these reasons, the defendant's motion to suppress the physical evidence discovered in his vehicle is DENIED.

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[10] Moreover, the officers had seen Stanfield talking to a know drug dealer.

[11] Following a legal stop, officers may conduct a *Terry* search of the inside of the vehicle "so long as [the officers] possess an articulable and objectively reasonable belief that the suspect is potentially dangerous." *Michigan v. Long*, 463 U.S. 1032, 1051, 103 S.Ct. 3469, 3481, 77 L.Ed.2d 1201 (1983). Such searches are limited to that which is necessary to protect the safety of officers. *Maryland v. Buie*, 494 U.S. 325, 335 n. 3, 110 S.Ct. 1093, 1098, 108 L.Ed.2d 276 (1990).

Because Stanfield was seized pursuant to a traffic stop, had the windows of the Pathfinder been clear, Officer Mackel could not constitutionally have opened the door to look inside unless he saw contraband or was given reason to believe that Stanfield posed a threat to him or his fellow officers.

Here, however, because Officer Mackel was unable to see through the heavily tinted windows of the Pathfinder, he had an objectively reasonable belief that Stanfield (or a hidden passenger) was potentially dangerous.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil No. L-95-0191

UNITED STATES OF AMERICA

v.

BILLY H. STANFIELD

ORDER

On September 13, 1995 and October 16, 1995, the Court held evidentiary hearings on defendant's motion to suppress physical evidence. For the reasons to be set forth by the Court in a Memorandum to follow, the Court shall DENY defendant's motion.

IT IS SO ORDERED this 24th day of October, 1995.

/s/ Benson Everett Legg
BENSON EVERETT LEGG
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. L-95-0191

UNITED STATES OF AMERICA

vs.

BILLY HOWARD STANFIELD

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS

Baltimore, Maryland
October 16, 1995

BEFORE THE HONORABLE BENSON EVERETT LEGG, JUDGE

* * * *

[3] OFFICER AVON MACKEL

a witness produced on call of the Government, having first been duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. State your name loudly and clearly into the microphone, spelling your last name.

THE WITNESS: My name is Officer Avon Mackel, Western District. A V O N M A C K E L.

CROSS-EXAMINATION

BY MR. NEEDLEMAN:

Q. Agent Mackel, good morning.

A. Good morning.

Q. Agent Mackel, I want to direct your attention to the 29th day of April, 1994, approximately 9:00 a.m. in the morning. What were you doing on that morning?

A. We was driving in routine patrol. Myself, Officer Kevin Buie and Office Mike Hammel.

Q. Were you driving the vehicle?

A. Yes, I was.

* * * *

[9] Q. Okay. Now, is it your custom—Strike that, Your Honor. There were three officers in the car, is that correct?

A. That's correct.

Q. Now, you all decided to alight from your undercover car and go up to the Pathfinder?

A. Officer Hammel and Officer Kevin Buie existed first, and then I existed a couple steps behind them.

Q. All right. You have one person in the Pathfinder, is that correct?

A. That's correct.

Q. Three police officers, is that correct?

A. That's correct.

Q. Okay. Now, when you stopped your vehicle and you started to move, and I mean footwise, you started to move toward the Nissan, tell His Honor what you saw the driver do?

A. The driver was talking to a gentleman I know as Mr. William Staten, who was in the second floor window.

Q. Okay. Did you see any exchanges between Mr. Stanfield, the driver, and the person in the second floor window?

A. No, I did not.

Q. Well, now your car is there and three officers get out of car to do what?

[10] A. Well, I wanted to back them up for safety reasons.

Q. Hold it right there. I already asked you if you received any call whatsoever and you said no.

A. That's correct.

Q. Now, safety. Did you have any information whatsoever, at 9:00 in the morning on the 29th day of April, 1994, that Mr. Stanfield was armed?

A. No, I did not.

Q. Did you have any information whatsoever from whatever source derived, that the vehicle contained a weapon?

A. No.

Q. Is there any information you can tell Judge Legg that Mr. Stanfield offered to you, or the other two officers, any kind of violence whatsoever?

A. No, he did not.

Q. So when you say you moved for safety, surely that is based upon some subjective reasoning you might have had, is that correct?

A. I would say so. To protect my fellow officers.

Q. Well, I understand that, but did they tell you "You better back me up." Did they tell you that?

A. No.

Q. Did they take out their guns?

[11] A. No, they did not.

Q. Doesn't that belie the fact that if they didn't take out their guns or ask for back up, that the idea that you were in some kind of danger is purely really illusionary on your behalf, isn't that correct?

A. No, it's not.

Q. Are you saying that because the area is a black area in Baltimore City in the Western District and because you make many arrests there, that therefore you automatically believed that you were in some kind of danger; is that what you are saying?

A. That is totally not what I am saying, no.

Q. Well, if you have no information and no one is asking for any kind of a back up, and you don't see any kind of danger, or criminal activity afoot, could you tell His Honor why did you think you were in danger at that point in time?

A. When we work together, we work as one and when one moves, the other moves. I am going to protect any fellow officers, make sure he stays okay.

Q. Okay. Now, you get up to the vehicle, is that correct?

A. That's correct.

* * * *

[27] Q. Do you remember him saying to Mr. Stanfield "You must really kept this car clean. You must wax this car a lot." Do you remember him saying that?

A. No, I don't.

Q. Is it your absolute opinion that Officer Buie, that's B U I E, had the licensed and registration, and it wasn't Officer Hammel?

A. I am not sure which one had the license and registration. I believe it was Officer Buie, but I am not absolutely sure.

Q. And do you remember the car at all?

A. Yes, I did.

MR. NEEDLEMAN: Okay, Permission to approach, Judge. Your Honor, let the record reflect that I am, with the Government's permission, showing Agent Mackel previously marked Defendant's Exhibits 5 and 10, marked September 13th.

Q. I want you to look at that. I know if you need another one, I have it, to better identify, but does that look like the vehicle Mr. Stanfield was driving on the 29th day of April, 1994?

A. Yes, this does look like it.

Q. I do have another, State's Exhibit 1, that is, would that more enlighten you as to that being the same car?

[28] A. I say again, it looks like the same vehicle.

Q. Okay. Thank you. Now, in those pictures you would say those windows are tinted, would you not?

A. Yes, they are.

Q. And you would say that it might be somewhat difficult, even if you are standing right up on the car, right up on the car, to look in the back seat of that car?

A. That is incorrect.

Q. You could see in the back seat of the car?

A. That's correct.

Q. You could see clearly whatever is in the back seat of the car?

A. That's correct.

Q. Is that what you are saying? Now, on the day that you told His Honor that, in fact, the window, the passenger window, happened to be down?

A. That's correct.

Q. Now, did the car have power windows and power seats, if you remember?

A. I am not sure.

Q. Power door locks, if you remember?

A. I am not sure.

Q. Was there a passenger in the car?

A. No.

[29] Q. And when you looked into Defendant's Exhibit 5, you will have to say that those windows are heavily tinted, isn't that correct?

A. They are tinted. I am not sure what position you took the picture from, from the sunlight.

Q. Now, was it bright sunlight that day?

A. Yes, it was.

Q. Okay.

A. Early morning.

MR. NEEDLEMAN: Ask His Honor to—

(Passing up photographs.)

Q. When you pulled up to the vehicle, if you were really there for a traffic violation, and you were facing

this vehicle, before anybody got out of this car, you could have called in his license plate number, could you not?

A. Yes, I could have.

Q. Did you do that?

A. No, I did not.

Q. Why not?

A. It wasn't necessary at that point.

Q. Okay, but license plate numbers are called in for many reasons, one of them being to see if there are any wants or warrants on the car, is that correct?

A. If the car is stolen, predominantly for stolen [30] cars.

Q. Right. Also licenses, driving privileges, licenses, are also called in to see if there are any wants or warrants on the actual person, isn't that correct?

A. That is if you ask KGA to run it to NCIC, but they predominantly run it through MVA's system.

Q. But that wasn't done either?

A. No, it wasn't.

Q. Now, you have told His Honor that what really—Strike that, Your Honor.

Q. What really happened here was that you were on routine patrol, in your bullet proof vests, and you saw Mr. Stanfield talking to someone who you knew, isn't that correct?

A. Once I pulled into the block, that is correct. I recognized who it was.

Q. Court's indulgence, Your Honor. When you first saw the car you were traveling northbound, is that correct?

A. When I first, traveling northbound? No. We were traveling eastbound on Moser.

Q. Okay. Got you. Now, when you saw Mr. Stanfield talking to someone, isn't it true that that is why you really stopped your vehicle and got out of [31] the car and started investigating Mr. Stanfield?

A. No.

Q. Isn't it true that that person you had known through previous, I guess through some previous dealings, that he might be or was a law breaker?

A. What person? The person in the window or the person in the car?

Q. Mr. Staten.

A. Yes, I had dealings with Mr. Staten before.

Q. And the real reason you got out of the car, all three of you, had nothing to do with being double parked, but you wanted to see what was up, isn't that correct?

A. No, that is not true.

Q. And you really, all you really had was a hunch and you just wanted to go in and see what was up?

A. What do you mean? Go in where?

Q. Go into his car.

A. I never went into his car until he was placed under arrest.

Q. Did you ever call down "Hey, Mr. Staten, how you doing? Avon Mackel here. Remember me?" Ever do that?

A. No, sir, I did not.

MR. NEEDLEMAN: I have no further questions.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Docket L-95-0191

UNITED STATES OF AMERICA,
Plaintiff

vs.

BILLY HOWARD STANFIELD,
Defendant

Baltimore, Maryland

September 13th, 1995

The above entitled matter came on for a hearing in the United States District Court before the Honorable Benson Everett Legg, beginning at 10:00 o'clock a.m.

[34] CROSS-EXAMINATION

BY MR. NEEDLEMAN:

Q. Officer Buie, from your testimony, I garner the fact that, as you left the Western District that morning, which is the Western District, you weren't going anywhere in particular?

A. Nowhere in particular.

Q. O.K.. So, therefore, you can tell His Honor, Judge Legg, that you had no information about any pathfinder, did you?

A. No information.

Q. You had no information about Billy Stanfield, did you?

A. No information about Billy Stanfield.

* * * *

[40] Q. I understand that, but did he try to get away from the vehicle?

A. No sir.

Q. Did you see, now think back, did you see Mr. Stanfield at that moment in time make any furtive moves towards either under the driver's seat or towards the back seat of that vehicle?

A. I can't recall whether his hands were moving about the vehicle, it's normal practice when you come up to try to keep them in your sight, for Officer's safety, but I never made a movement towards by gun.

I did take just a little bit of an arch just for my safety to try to get a better view of Mr. Stanfield in the driver's seat.

Q. Well, what happened though, if—let me put it this way, maybe it's a better question, sir, if he had made, and I mean Mr. Stanfield, Your Honor, a furtive move that you felt in fear of, you would have taken appropriate action in regards to your safety and your fellow Officer's safety, would you have not?

A. Yes, sir.

Q. And, in this case, and on that time and at that date, neither one of made any moves towards your weapon or removing [41] immediately Mr. Stanfield from that vehicle?

A. I did not make a move for my weapon. I don't know what Detective Hamel and Officer Mackel did, as they approached it. I had my eyes on the driver of the vehicle and I was conducting myself to try to put myself in an advantageous position basically, just trying to speak with the driver.

Q. Well, did he speak with you?

A. Eventually.

Q. What do you mean eventually? You say you asked him for his driver's license and registration?

A. Yes, I mean when I came up and I said can I have your driver's license and registration,—

Q. What did he say to you?

A. He said something about I know my rights, and then he said okay, and then there might have been some other things said, but those are the two things that I remember.

Q. Did he seem sweaty?

A. He seemed pissed off.

Q. Well, did you see him sweat, sir?

A. I don't recall that.

Q. Did you see him stutter?

A. I don't recall.

Q. Well, if it were important, based upon your experience and expertise, surely, you would have written that in some type of statement of charges, would you have not?

[42] A. Not that someone was sweating.

* * * *

[46] Q. I want to show you Defendant's Exhibit 7. Now, can you describe what you are looking at?

A. This appears to be a picture of the front of the Nissan Pathfinder in question.

Q. Okay. Now, could you describe to His Honor, and His Honor will see it, but, just for the record, the quality of those windows?

A. It looks like an illegal tint.

Q. It could very well be. But thank for saying that, because an illegal tint is a tint that makes the windows darker that what's legal, isn't that correct?

A. Yes, sir.

Q. Okay. And I want you to look at Defendant's Exhibit 7. Based upon your experience and expertise of seeing vehicles, especially vehicles that you stop on the streets of Baltimore, that is, in fact, a heavy tint, is it not?

A. Yes, sir. From this picture, it looks like that vehicle that's in this picture has a heavy tint.

[47] Q. O.K. Now, in regards to Defendant's Exhibit Number 7, this is the direction you came to the car, you

and your fellow officers walked to the car from the front—to the front?

A. Yes, sir.

Q. So this would be, would it not, the picture that you saw?

A. Well, that's the way I approached the vehicle, but that's not the way it looked that day.

Q. Well, if it's not the way it looked, what's different about it?

A. The tint doesn't seem to be—it seems to be darker in this picture than it was the day that I approached him. Maybe because this picture was taken it looks like on a cloudy, rainy day, and the day I approached him it was sunny outside and bright.

And that's why I said that the tint appears to be darker, because, when I approached the vehicle, you could see in the vehicle as clear as day.

Q. Clear as day?

A. Because I guess the sun was shining through the windows.

* * * *